



August 23, 2000

Mr. Mike Siebert
Criminal District Attorney
91st Judicial District
Eastland County
2nd Floor Courthouse
Eastland, Texas 76448

OR2000-3227

Dear Mr. Siebert:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138277.

The Office of the Criminal District Attorney of Eastland County (the “criminal district attorney”) received a request for information pertaining to a specified individual. You seek our opinion as to whether you may decline to accept or comply with the request for information under section 552.028 of the Government Code. Alternatively, you claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

Section 552.028 of the Government Code provides as follows:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility; or

(2) an agent of that individual, other than that individual’s attorney when the attorney is requesting information that is subject to disclosure under this chapter.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1), or that individual's agent, information held by the governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.

Gov't Code § 552.028. You inform us that the requestor is the mother of the individual to whose prosecution for murder the requested information pertains. You further inform us that the requestor's son was convicted of the offense and is serving a 99-year sentence as an inmate of the Texas Department of Criminal Justice. Based on the manner in which the request for information was prepared, including the hand-written insertions of certain identifying information, you are persuaded that the inmate himself prepared the request and submitted it to his mother to be completed and forwarded to your office. You therefore assert that the requestor is acting as agent for the inmate, so that under section 552.028(a) the criminal district attorney is not required to accept or comply with the request for information. Based on your representations and our review of the submitted request, we conclude that the criminal district attorney need not comply with the instant request for information in accordance with section 552.028(a)(2) of the Government Code. *See also Hickman v. Moya*, 976 S.W.2d 360 (Tex. App.--Waco 1998, pet. denied), *Moore v. Henry*, 960 S.W.2d 82 (Tex. App. -- Houston [1st Dist.] 1996, no writ); Open Records Decision No. 656 (1997) (construing statutory predecessor). As we are able to dispose of this matter under section 552.028, we need not address your exceptions to disclosure of the requested information under sections 552.103 and 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

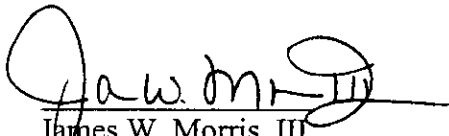
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 138227

Encl. Submitted documents

cc: Ms. Marguerite A. Caraway
1503 Primrose Lane
Cisco, Texas 76437
(w/o enclosures)